

**FILED**

**AUG 28 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GILBERTO ARTURO DIAZ-  
MARTINEZ,

Defendant - Appellant.

No. 05-50525

D.C. No. CR-04-00095-JVS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
James V. Selna, District Judge, Presiding

Submitted August 21, 2006<sup>\*\*</sup>

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Gilberto Arturo Diaz-Martinez appeals from the 42-month prison sentence imposed following his guilty-plea conviction for one count of illegal re-entry into

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the United States following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Diaz-Martinez contends that the district court's imposition of a supervised release condition that requires him to report to his probation officer within 72 hours of re-entry into the United States violates the Fifth Amendment. His contention is foreclosed. *See United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006) (holding that the imposition of this supervised release condition does not violate the Fifth Amendment privilege against self-incrimination because the reporting requirement did not compel an admission of criminal activity).

Diaz-Martinez next contends that his sentence is unconstitutional because the enhancement he received for a prior conviction pursuant to § 1326(b) was not based on jury fact-finding. This contention is also foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), even though it has been called into question, unless it is explicitly overruled by the Supreme Court).

**AFFIRMED.**